



SHERRI R. CARTER
District Court Executive and
Clerk of Court

April 20, 2004

Clerk, United States District Court
District of Massachusetts
Donahue Federal Building
595 Main Street, Rm. 502
Worcester, MA 01608

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**
312 North Spring Street, Room G-8
Los Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4570

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(909) 328-4450

FILED
Clerk's Office
USDG, Mass.
Date 4/27/04
By [Signature]
Deputy Clerk

04 10829 WGY

MAGISTRATE JUDGE RBL

Re: Transfer of our Civil Case No. EDCV 04-236 RT

Case Title: Healthy Solutions LLC, etal. -v- ITV Direct Inc.

Dear Sir/Madam:

An order having been made transferring the above-numbered case to your district, we are transmitting herewith our entire original file in the action, together with certified copies of the order and the docket. Please acknowledge receipt of same and indicate below the case number you have assigned to this matter on the enclosed copy of this letter and return it to our office. Thank you for your cooperation.

Very truly yours,

Clerk, U.S. District Court

By Angelique Dominguez
Deputy Clerk
ANGELIQUE DOMINGUEZ

cc: All counsel of record

TO BE COMPLETED BY RECEIVING DISTRICT

Receipt is acknowledged of the documents described herein and we have assigned this matter case number CV: _____

Clerk, U.S. District Court

By _____
Deputy Clerk

(SGL) DISCOVERY, AO279, CL SED, TRANSFERRED

U.S. District Court
CENTRAL DISTRICT OF CALIFORNIA (Eastern Division - Riverside)
CIVIL DOCKET FOR CASE #: 5:04cv00236
Internal Use Only

Healthy Solutions v. ITV Direct Inc et al
Assigned to: Honorable Robert J. Timlin
Referred to: Magistrate Judge Stephen G. Larson
Demand: \$
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 28:1332 Diversity-Other Contract

Date Filed: 03/03/04
Jury Demand: Plaintiff
Nature of Suit: 190 Contract:
Other
Jurisdiction: Diversity

04 10829 WGY

Plaintiff

**Healthy Solutions, LLC, a
California limited liability
corporation**

represented by **Becky V Christensen**
Levin and O'Connor
384 Forest Avenue, Suite 13
Laguna Beach, CA 92651
949-497-7676
Fax : 949-497-7679
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

I hereby attest and certify on 4/28/04
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEPUTY CLERK



Craig McLaughlin
Levin and O'Connor
384 Forest Avenue, Suite 13
Laguna Beach, CA 92651
949-497-7676
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William E Levin
Levin and O'Connor
384 Forest Avenue, Suite 13
Laguna Beach, CA 92651
949-497-7676
LEAD ATTORNEY

dba

Direct Business Concepts

Alejandro Guerrero, *an individual*

represented by **Becky V Christensen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Craig McLaughlin
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Health Solutions Inc, *a California corporation*

represented by **Becky V Christensen**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Craig McLaughlin
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

ITV Direct Inc, *a Massachusetts corporation*

represented by **Christopher C Larkin**
Seyfarth Shaw
2029 Century Park E, Ste 3300
Los Angeles, CA 90067-3063
310-277-7200
Email: clarkin@la.seyfarth.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Christopher F Robertson
Seyfarth Shaw
Two Seaport Lane, Suite 300
Boston, MA 02210
617-946-4800

~~LEAD ATTORNEY~~*ATTORNEY TO BE NOTICED***Christopher M Robertson**

Carlton DiSante & Freudenberger

2600 Michelson Drive

Suite 800

Irvine, CA 92612

949-622-1661

Fax : 949-622-1669

*TERMINATED: 04/12/2004**LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Diana Tabacopoulos**

Seyfarth Shaw

2029 Century Park E, Ste 3300

Los Angeles, CA 90067-3063

310-277-7200

Fax : 310-201-5219

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED*

V.

Estate Defendant

Does, 1-10 inclusive*TERMINATED: 04/07/2004*

Filing Date	#	Docket Text
03/03/2004	●1	COMPLAINT against defendants Does, ITV Direct Inc.(Filing fee \$ 150.) Jury Demanded. , filed by plaintiff Healthy Solutions.(mrgo,) (Entered: 03/08/2004)
03/03/2004	●	Summons Issued re Complaint - (Discovery)[1] as to Does, ITV Direct Inc. (mrgo,) (Entered: 03/08/2004)
03/03/2004	●	NOTICE TO COUNSEL re Eastern Division Pilot (mrgo,)

03/03/2004	●2	CERTIFICATION of Interested Parties filed by Plaintiff Healthy Solutions. (mrgo,) (Entered: 03/08/2004)
03/17/2004	●3	STANDING ORDER by Judge Stephen G. Larson: (see document for further details)(ad,) (Entered: 03/18/2004)
04/07/2004	●6	FIRST AMENDED COMPLAINT against defendant ITV Direct Inc ; Party Does terminated amending Complaint - (Discovery)[1] ; Jury Demand,filed by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions. (No summons issued) (mrgo,) (Entered: 04/13/2004)
04/07/2004	●7	AMENDED CERTIFICATION of Interested Parties filed by Plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions. (mrgo,) (Entered: 04/13/2004)
04/07/2004	●	REPORT ON THE FILING OF AN ACTION REGARDING TRADEMARK (cc: form mailed to Washington, D.C.) (Opening) (mrgo,) (Entered: 04/13/2004)
04/07/2004	●8	PROOF OF SERVICE Executed by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions, upon ITV Direct Inc served on 3/11/2004, answer due 3/31/2004. The Summons and Complaint were served by personal service service, by Federal Statute statute, upon Eileen Barrett, agent authorized to accept service of process. Due Dilligence declaration not attached. Original Summons not returned. (mrgo,) (Entered: 04/13/2004)
04/08/2004	●9	NOTICE OF EX PARTE APPLICATION AND APPLICATION for Temporary Restraining Order; expedited discovery, and order to show cause re preliminary injunction filed by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions. Lodged proposed order. (mrgo,) (Entered: 04/13/2004)
04/08/2004	●10	DECLARATION of Alejandro Guerrero, Gregory Geremesz, Michael Howell and plaintiffs' counsel in support of EX PARTE APPLICATION for Temporary Restraining Order [9] filed by plaintiffs Alejandro Guerrero, Health Solutions Inc,

		Health Solutions. (mrgo,) (Entered: 04/13/2004)
04/08/2004	●11	AMENDED DECLARATION of Alejandro Guerrero in support of EX PARTE APPLICATION for Temporary Restraining Order[9] filed by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions. (mrgo,) (Entered: 04/13/2004)
04/08/2004	●12	MEMORANDUM of points and authorities in Support of EX PARTE APPLICATION for Temporary Restraining Order[9] filed by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions. (mrgo,) (Entered: 04/13/2004)
04/08/2004	●13	NOTICE OF NEW COUNSEL FOR DEFENDANT filed by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions. (mrgo,) (Entered: 04/13/2004)
04/08/2004		***Attorney Christopher M Robertson for ITV Direct Inc, Diana Tabacopoulos for ITV Direct Inc added. (mrgo,) (Entered: 04/13/2004)
04/08/2004	●14	AMENDED PROOF OF SERVICE filed by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions re [9] EX PARTE APPLICATION for Temporary Restraining Order, was served on 4/8/04. (mrgo,) (Entered: 04/13/2004)
04/09/2004	●4	CONSENT TO MAGISTRATE JUDGE OR REQUEST FOR REASSIGNMENT FOR EASTERN DIVISION PILOT PROJECT before Magistrate Judge Stephen G. Larson, in accordance with Title 28 Section 636(c) and F.R.CIV.P 73(b), filed by defendant ITV Direct Inc; The undersigned party to this civil matter does not consent to proceed before Magistrate Judge Larson and hereby requests reassignment to District Judge Robert Timlin. (ad,) (Entered: 04/09/2004)
04/09/2004	●15	NOTICE of Prior Pending Action filed by defendant ITV Direct Inc (ad,) (Entered: 04/13/2004)
04/09/2004	●16	CERTIFICATION AND NOTICE of Interested Parties filed by Defendant ITV Direct Inc (ad,) (Entered: 04/13/2004)
04/09/2004	●17	PROOF OF SERVICE filed by defendant ITV Direct Inc,

		Consent to Magistrate Judge, Certification and Notice of Interested Parties, Notice of Prior Pending Action was served on 4/9/04. (ad,) (Entered: 04/13/2004)
04/12/2004	●5	NOTICE OF REASSIGNMENT. Pursuant to General Order 03-13, this case has been reassigned to Judge Robert J. Timlin for all further proceedings. Any discovery matters are assigned to Magistrate Judge Stephen G. Larson. All documents subsequently filed in this case must reflect the case number ED CV 04-236 RT (SGLx). (la,) (Entered: 04/12/2004)
04/12/2004	●18	CONSENT TO PROCEED before Magistrate Judge Stephen G. Larson, in accordance with Title 28 Section 636(c) and F.R.CIV.P 73(b), filed by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions; Any appeal shall be taken before the 9th Circuit Court of Appeals. (ad,) (Entered: 04/13/2004)
04/12/2004	●19	MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION to Plaintiffs' Motion for Temporary Restraining Order [9]; Declarations of Robert Maihos, Todd Stanwood and Christopher Robertson (ad,) (Entered: 04/13/2004)
04/12/2004	●20	DECLARATION filed by defendant ITV Direct Inc of Christopher Robertson in opposition to Motion for Temporary Restraining Order [9] (ad,) (Entered: 04/13/2004)
04/12/2004	●21	DECLARATION filed by defendant ITV Direct Inc of Todd Stanwood in opposition to Motion for Temporary Restraining Order [9] (ad,) (Entered: 04/13/2004)
04/12/2004	●22	DECLARATION of Robert Maihos filed by defendant ITV Direct Inc in opposition to Motion for Temporary Restraining Order [9] (ad,) (Entered: 04/13/2004)
04/12/2004	●23	PROOF OF SERVICE filed by defendant ITV Direct Inc [19] Memorandum of Points and Authorities in Opposition, [20], [21],[22] Declarations of Robert Maihos, Todd Standwood and Christopher Robertson, was served on 4/12/04. (ad,) (Entered: 04/13/2004)
04/12/2004		***Attorney Christopher F Robertson for ITV Direct Inc

		added. Attorney Christopher M Roberson terminated. (ad,) (Entered: 04/15/2004)
04/12/2004	●	FAX number for Attorney Christopher F Robertson is 617-946-4801. (ad,) (Entered: 04/15/2004)
04/12/2004	●	FAX number for Attorneys Becky V Christensen, Craig McLaughlin is 949-497-7679. (ad,) (Entered: 04/15/2004)
04/13/2004	●24	REPLY in support of Motion for Temporary Restraining Order Re First to File Rule [9] filed by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions (ad,) (Entered: 04/15/2004)
04/14/2004	●25	ORDER by Judge Robert J. Timlin 1) TRANSFERRING This Case to the District of Massachusetts; and 2) DENYING Plaintiffs' Ex Parte Application for a Temporary Restraining Order, Expedited Discovery, and Order to Show Cause Re Preliminary Injunction as MOOT [9]: ACCORDINGLY, IT IS ORDERED THAT 1) This action be transferred to the District of Massachusetts, pursuant to the first-to-file rule; and 2) Plaintiffs' application for a temporary restraining order, expedited discovery and Order to Show Cause re Preliminary Injunction be DENIED as moot. (Made JS-6. Case Terminated.)(ad,) (Entered: 04/15/2004)
04/14/2004		***Set CASE TRANSFERRED Flag (ad,) (Entered: 04/19/2004)
04/15/2004	●	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Christopher F Robertson for Defendant ITV Direct Inc (ad,) (Entered: 04/15/2004)
04/15/2004	●	PLACED IN FILE - NOT USED re (Proposed) Temporary Restraining Order and Order Expediting Discovery and Order to Show Cause Re Preliminary Injunction submitted by plaintiffs Alejandro Guerrero, Health Solutions Inc, Healthy Solutions (ad,) (Entered: 04/15/2004)
04/20/2004	●	TRANSMITTAL of documents mailed to USDC District of Massachusetts with certified copy of docket and order of transfer, original and one copy of transmittal letter-civil case

ENTERED

APR 15 2004

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Priority
Send ☒
Enter ☒
Closed ☒
JS-5/JS-6 ☒
JS-2/JS-3 ☒
Scan Only ☐

FILED
CLERK U.S. DISTRICT COURT
APR 14 2004
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION BY DEPUTY

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HEALTHY SOLUTIONS, LLC dba DIRECT
BUSINESS CONCEPTS; HEALTH
SOLUTIONS, INC.; and ALEJANDRO
GUERRERO,

Plaintiffs,

v.

ITV DIRECT INC.; and DOES 1-10

Defendants.

CASE NO. EDCV 04-236 RT

ORDER 1) TRANSFERRING THIS CASE
TO THE DISTRICT OF
MASSACHUSETTS; AND 2) DENYING
PLAINTIFFS' EX PARTE APPLICATION
FOR A TEMPORARY RESTRAINING
ORDER, EXPEDITED DISCOVERY, AND
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION AS MOOT

**THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).**

The court, Judge Robert J. Timlin, has read and considered the ex parte application ("Application") of plaintiffs Healthy Solutions, LLC, dba Direct Business Concepts ("Direct Business Concepts"), Health Solutions, Inc. ("Health Solutions"), and Dr. Alejandro Guerrero ("Dr. Guerrero") (collectively, "Plaintiffs") for a temporary restraining order ("TRO"), expedited discovery, and Order to Show Cause re: Preliminary Injunction, as well as defendant ITV Direct, Inc. ("ITV Direct")'s opposition ("Opposition"), and Plaintiffs' reply ("Reply"). Based on such consideration, the court concludes as follows:

I hereby attest and certify on 4/20/04
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY CLERK



DOCKETED ON CM
APR 15 2004
BY 041

APR 15 2004

I.

BACKGROUND

Dr. Guerrero, after a long practice in herbal and nutritional therapy, developed a nutritional supplement made of grasses, herbs, and vegetables called "Supreme Greens." Dr. Guerrero's formula for Supreme Greens has been sold under the trade name and mark Supreme Greens both by Plaintiffs, other distributors throughout the United States, Canada, and the Caribbean, and by defendant ITV Direct, Inc. ("ITV Direct"), previously under license.

ITV Direct, under a distribution agreement with Plaintiffs, began marketing Supreme Greens nationwide in August 2003, using television infomercials. ITV Direct has repeatedly aired at least two versions of the Supreme Greens infomercial featuring Dr. Guerrero. The Supreme Greens infomercial has continued to air on cable television, as recently as March 2004.

In late 2003, and again in February 2004, ITV Direct represented to Plaintiffs that they wanted to buy the mark "Supreme Greens," and threatened to stop paying for the product if the mark was not assigned to them. Beginning with invoices for shipments in December 2003, ITV Direct failed to pay for the Supreme Green delivered to it. In addition, on March 16, 2004, ITV Direct sent a "Notice to Cease and Desist" to AM Marketing, LLC, an authorized distributor of Supreme Greens. In the notice, ITV Direct claimed exclusive distribution rights of Supreme Greens and ownership of the mark "Supreme Greens."

On March 2, 2004, ITV Direct filed a complaint against Health Solutions, Guerrero, and others in the United States District Court for the District of Massachusetts ("the Massachusetts Action"), alleging breach of contract, conversion, misrepresentation, and violation of the Massachusetts Unfair Trade Practices Act, and claiming ownership of the disputed trademark, and infringement by Health Solutions and Guerrero. Health Solutions, on March 3, 2004 filed a complaint in this action against ITV Direct for breach of contract and common counts. On April 7, 2004, Plaintiffs filed a First Amended Complaint ("FAC") against ITV Direct, alleging violations of the Lanham Act, unfair competition, unfair trade practices, breach of contract, and violation of state trademark law, common counts, violation of right to publicity, conversion, and declaratory judgment.

II.

ANALYSIS

ITV Direct, in its opposition to the instant application, requests that this court stay, dismiss, or transfer the case to the District of Massachusetts, pursuant to the first-to-file rule.

A. The First-to-File Rule

The “first-to-file” rule is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another federal district court. Pacesetter Systems, Inc. v. Medtronic, Inc., 678 F.2d 93, 94-95 (9th Cir. 1982). The first-to-file rule states that when two suits are pending involving the same parties and issues, the action filed first ordinarily should proceed to judgment. Alltrade, Inc. v. Uniweld Products, Inc., 946 F.2d 622 (9th Cir.1991); Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir.1986).

Three threshold factors should be considered in deciding whether to apply the first-to-file rule: 1) the chronology of the two actions; 2) the similarity of the parties; and 3) the similarity of the issues. Bryant v. Oxxford Exp., Inc., 181 F.Supp.2d 1045, 1048 (C.D. Cal. 2000); Guthy-Renker Fitness, L.L.C. v. Icon Health & Fitness, Inc., 179 F.R.D. 264, 270 (C.D. Cal. 1998). However, even if the first-to-file rule is found to be applicable in a given case, the court may still decide to dispense with the rule for equitable reasons; for example, where the first action was filed merely as a means of forum shopping. Guthy-Renker Fitness, 179 F.R.D. at 270.

There is no doubt that all three of the threshold factors are satisfied here. None of the parties contest the following: 1) the Massachusetts Action was filed first, albeit only one day earlier; 2) the Massachusetts Action implicates the same parties; and 3) both actions involve the same core issues concerning the parties' respective rights to the “Supreme Greens” trademark and the breach of a distributorship agreement between Health Solutions and ITV Direct.

Plaintiffs, however, argue that the equitable exceptions to the first-to-file rule apply here, namely that the Massachusetts action was an anticipatory suit filed for the purpose of forum shopping, and that the balance of convenience weighs in favor of the later- filed action in this district.

1 B. Equitable Exceptions to the First-to-File Rule

2 There are a variety of equitable circumstances under which courts have declined to apply
3 the first-to-file rule. For instance, an exception to the first-to-file rule may be made in situations
4 involving a bad faith and anticipatory suit filed for the purpose of forum shopping. Bryant, 181
5 F.Supp.2d at 1048. A court may also relax the first-to-file rule if “the balance of convenience
6 weighs in favor of the later- filed action.” Ward v. Follett Corp., 158 F.R.D. 645, 648 (N.D.
7 Cal.1994).

8 *1. Anticipatory Suits*

9 A suit is “anticipatory” for the purposes of being an exception to the first-to-file rule if the
10 plaintiff in the first-filed action filed suit on receipt of *specific, concrete* indications that a suit by
11 the defendant was imminent. Bryant, 181 F.Supp.2d at 1048; Guthy-Renker Fitness, 179 F.R.D. at
12 270. Such anticipatory suits are disfavored because they are examples of forum shopping. Mission
13 Ins. Co. v. Puritan Fashions Corp., 706 F.2d 599, 602 n. 3 (5th Cir.1983).

14 Plaintiffs contend that departure from the first-to-file rule is warranted based on ITV’s
15 anticipatory filing of the Massachusetts Action. They assert that ITV Direct filed the Massachusetts
16 Action in violation of a “standstill agreement” during settlement negotiations between the parties.
17 Without being provided the details of that agreement, the court concludes that this assertion weighs
18 against application of the exception for anticipatory suits, because apparently, ITV Direct did not
19 file the Massachusetts Action in response to specific or concrete indications that Plaintiffs were
20 soon to file suit. Rather, Plaintiffs seem to argue that ITV Direct’s suit caught them by surprise, as
21 it was in violation of their standstill agreement. The Massachusetts Action is, therefore, not an
22 “anticipatory action” for the purposes of being an exception to the first-to-file rule.

23 *2. Convenience*

24 Convenience of the parties and witnesses is another equitable exception to the first-to-file
25 rule. Guthy-Renker Fitness, 179 F.R.D. at 272-73. The convenience of nonparty witnesses is an
26 important factor to consider in determining whether to transfer a case to another forum. Id.
27 Additionally, relative ease of access to proof may be considered in deciding whether to transfer an
28 action. Id.; Van Dusen v. Barrack, 376 U.S. 612, 643, 84 S.Ct. 805, 822-23 (1964).

1 Here, Plaintiffs assert that:

2 the grounds of convenience do not dictate that this action be heard in
 3 Massachusetts. Witnesses, including suppliers, retailers, and
 4 purchasers are in fact scattered all over the United States in such
 5 diverse locations as Idaho, Florida and Oregon. Documents are
 6 similarly scattered. Authorized distributors are in Wyoming, Texas,
 Washington and Kentucky, to name a few. Issues of federal law, (the
 Lanham Act), California law (publicity rights, unfair trade practices
 and trademark law), and Massachusetts's law (contract and unfair
 trade practices) are all at issue.

7 (Reply at 3). By no means does it appear that there are compelling reasons of convenience to retain
 8 this case in California. As the Plaintiffs themselves admit, the witnesses and parties are "scattered."
 9 As such, the Plaintiffs have not persuaded the court that the equitable exception to the first-to-file
 10 rule based on convenience should apply.

11 In conclusion, the court finds that the threshold factors for application of the first-to-file
 12 rule have been met, and neither of the equitable exceptions to the first-to-file rule apply in the
 13 instant case. Accordingly, the court will decline to exercise jurisdiction over this case, and will
 14 transfer it to the District of Massachusetts, pursuant to the first-to-file rule. Because the court has
 15 determined that this action should be transferred to the District of Massachusetts, Plaintiffs'
 16 application for a TRO, expedited discovery, and Order to Show Cause re: Preliminary Injunction is
 17 rendered moot, subject to renoticing in the District of Massachusetts.

18 IV.

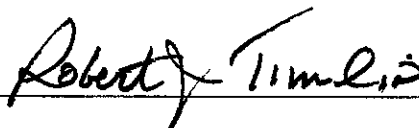
19 DISPOSITION

20 ACCORDINGLY, IT IS ORDERED THAT:

- 21 1) This action be transferred to the District of Massachusetts, pursuant to the first-to-
 22 file rule; and
 23 2) Plaintiffs' application for a temporary restraining order, expedited discovery, and
 24 Order to Show Cause re: Preliminary Injunction be DENIED as moot.

25
 26
 27 4/14/04

28 DATE



ROBERT J. TIMLIN, DISTRICT COURT JUDGE